IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 268 of 1995

Reserved on: 26.10.2007

Date of decision: 2.11.2007

Gopal Dass ... Appellant

Versus

Rasil Chand & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] Yes.

For the appellant: Mr. Ramakant Sharma, Advocate.

For the respondents: None for respondent No. 1.

Ms. Jyotika, Court Guardian, for respondents No. 2 and 3.

V.K. Ahuja, J. :

This is a regular second appeal filed by the appellant against the judgment and decree of the Court of learned District Judge, Hamirpur, dated 7.6.1995, vide which the judgment and decree passed by the learned Sub Judge Ist Class(1), Hamirpur, dated 30.6.1989, decreeing the suit of the respondents as against the appellant for declaration and permanent injunction was upheld.

Briefly stated the facts of the case are that the respondents (herein after referred to as the plaintiffs) filed a suit for declaration and permanent injunction as against the appellant (hereinafter referred to as defendant). The allegations made by the plaintiffs were that the plaintiffs are joint owners in possession of 2/3rd share of land measuring 11 Kanal 8 Marla comprised in Khasra Nos. 36 and 45. It was also alleged that

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

the entries in the revenue record showing the defendant as owner in possession qua the suit land are wrong, illegal and not binding upon the plaintiffs. It was alleged that the suit land was previously in possession of their grand father Shri Naudha as tenant and after his death their father Shri Tulsi Ram succeeded the tenancy rights qua the suit land. After the death of Tulsi Ram, plaintiffs and defendant succeeded to the tenancy rights in regard to the suit land and they had become owners of the suit land. But the defendant in connivance with the revenue authorities got the revenue entries changed in his favour. The defendant tried to interfere with the possession of the plaintiffs over the suit land, hence the suit filed by the plaintiffs.

Defendant took up preliminary objections in regard to jurisdiction, estoppel etc. On merits, defendant pleaded that he is in exclusive possession of the suit land as a tenant since 1968 and the plaintiffs never remained in possession of the same and since he has become owner of the suit land by operation of law, hence the suit is liable to be dismissed.

The learned trial Court framed issues and the main issue framed was in regard to the question as to whether the plaintiffs' father and plaintiffs were tenants of the suit land. These findings were given by the learned trial Court in favour of the plaintiffs after referring to the oral as well as documentary evidence led by both the parties and the suit was decreed. Those findings were upheld by the learned first appellate Court, which dismissed the appeal filed by the appellant.

I have heard the learned counsel for the parties and have also gone through the record of the case.

The submissions made by the learned counsel for the appellant were that there was no entry in favour of their father in the revenue record showing his tenancy or ownership over the suit land. It was submitted that though there is an entry in favour of the grand father

of the parties Naudha showing him as a tenant over the suit land in the copy of jamabandi for the year 1963-64., but thereafter the land was not succeeded by their father and the defendant entered in possession of the suit land as a tenant and since he was duly recorded as tenant in the revenue record on the appointed day, when the H.P. Tenancy and Land Reforms Act, 1972, came into force and, therefore, he was entitled to be conferred the proprietary rights. According to the decision of a Full Bench of this Court in **Chuhniya Devi** Vs. **Jindu Ram**, **1991(1) Sim. L.C. 223**, the jurisdiction of the Civil Court was barred and since the plaintiffs never chose to withdraw their suit and file the same in accordance with the directions given in this case, the findings of the learned trial Court as well as that of learned first appellate Court decreeing the suit of the plaintiffs are liable to be set aside since the Civil Court had no jurisdiction to decide the question in regard to conferment of the proprietary rights and as such, the appeal was liable to be accepted.

On the other hand, the learned counsel for the respondents had submitted that the findings of both the Courts below are based upon correct appreciation of oral as well as documentary evidence since after the death of Naudha, the land was to be succeeded by father of both the parties, namely, Tulsi Ram and after his death, it was to be succeeded by both the parties and since the defendant managed to get the wrong entries in his favour, therefore, the suit was rightly decreed by the learned trial Court and those findings were upheld by the learned first appellate Court.

In the grounds of appeal, the appellant had taken a specific plea that there was no rebuttal to the evidence led by the appellant particularly Ext. P-2, a copy of jamabandi for the year 1968-69 and the subsequent mutation on the basis of this entry of ownership under the H.P. Tenancy and Land Reforms Act, which has been lightly brushed aside

by the Courts below, which have fallen into error in deciding the case as against the appellant. The appeal was admitted by this Court on substantial questions of law and the main questions were as to whether the presumption of correctness attached to copy of jamabandi for the year 1968-69 was rebutted by the plaintiffs and there has been misreading of evidence by the Courts below.

From a perusal of the record of the case, it is clear that in copy of jamabandi for the year 1963-64 Ext. P-1, Naudha the grand father of the parties has been duly entered as a tenant over the suit land under the owners etc. A perusal of Ext. P-2 copy of jamabandi for the year 1968-69 shows that the defendant is duly recorded as non-occupancy tenant of the suit land under the owners. Thereafter, in Ext. P-3, copy of jamabandi for the year 1985-86, defendant has been duly recorded as owner in possession of the suit land. A perusal of copy of Khasra Girdawari Ext. P-10 from Kharif 1964 to Rabi 1969 shows that earlier Naudha was entered as a tenant and a change was recorded in Kharif 1968 and thereafter the entry of tenancy was made in favour of the defendant and there was also a mention of the fact that Naudha is dead.

It has come up in the evidence of the plaintiff that Naudha was dead for the last 28-29 years and Tulsi Ram died 20-22 years ago when the statement was made by the plaintiffs witnesses in the year 1987. It follows from this discussion that Naudha died some time in 1958-59 and Tulsi Ram died 20-22 years ago which comes to 1965-67 approximately. There is nothing in the revenue record showing that after the death of Naudha, the suit land was ever mutated in the name of father of both the parties, namely, Tulsi Ram or that Tulsi Ram was ever recorded in possession after the death of his father. I have also referred to above the jamabandi for the year 1963-64 which referred to the entry in favour of Naudha and thereafter in 1968-69 when the entry is in favour of the defendant earlier as tenant in copy of jamabandi for the year

1968-69 and thereafter, as an owner in copy of jamabandi for the year 1973-74 Ext. D-2 and Ext. D-3 a copy of jamabandi for the year 1978-79, the defendant has been duly recorded as owner in possession of the suit land as well as in subsequent copies of jamabandi for the year 1985-86 Ext. D-4 also. The learned trial Court as well as the learned first appellate Court had considered the question that since Naudha was recorded as a tenant, the entry in regard to tenancy was likely to be effected in favour of Tulsi Ram, his son and father of the parties and thereafter, in the name of both the parties after the death of their father, namely, Tulsi Ram. This was never done and in the copy of jamabandi for the year 1968-69, the defendant was exclusively entered as a tenant in possession and said entry was never challenged by the plaintiffs at any point of time except by filing the present suit when the proprietary rights as discussed above had already been conferred upon the defendant, since he was recorded as a tenant in possession of the suit land on the day when the H.P. Tenancy and Land Reforms Act came into effect. According to the provisions of the H.P. Tenancy and Land Reforms Act, the persons who were recorded as tenants on the appointed day i.e. on 3.10.1975, they were to be conferred the proprietary rights and according to the provisions of that Act, conferment of proprietary rights was automatic.

A question arises at this stage as to whether a challenge could be made to the conferment of proprietary rights conferred over the defendant which was automatic and an order by Land Reforms Officer can also be passed in this regard and as to whether the said order could be challenged before the Civil Court or the basis of the entry which existed in favour of the tenants i.e. the defendant in the present case. The findings were given by the learned trial Court in the year 1989 i.e. on 30.6.1989 and since the case of **Chuhniya Devi** Vs. **Jindu Ram** (supra) was not decided, there was no question for the trial Court to consider the said decision. However, when the findings were given by the learned first

appellate Court on 7.6.1995, this decision had already been given by the Full Bench of this Court and had been duly published in 1991 Shimla Law Cases also and, therefore, the decision dated 21.9.1990 was applicable to the facts of the case. However, this decision appears to have not been brought to the knowledge of the learned first appellate Court but since it was applicable to the facts of the case it has to be referred and applied to the facts of the present case by this Court. The question of conferment of the proprietary rights as to whether that could be challenged before the Civil Court was considered by a Full Bench of this Court and finally in regard to the jurisdiction of the Court, the observations made in 64(b) are relevant and are reproduced below:

> "64(b) The civil court has no jurisdiction to go into any question connected with the conferment of proprietary rights under section 104 of the H.P. Tenancy and Land Reforms Act, 1972, except in a case where it is found that the statutory authorities envisaged by that Act had not acted in conformity with the fundamental principles of judicial procedure or where the provisions of the Act had not been complied with."

It follows from the above discussion that the Civil Court could not go into the question of conferment of the proprietary rights except in a case when the statutory authorities had not acted in conformity with the fundamental principles of judicial procedure or where the provisions of the Act had not been complied with. Once decision had been given by this Court which was applicable to the present facts and the jurisdiction of the Civil Court was limited only to look into the question mentioned above, the respondents should have withdrawn the suit and filed a fresh suit challenging the order as provided for in the above decision. The proprietary rights had already been conferred upon the defendant who was duly recorded as owner after this Act came into force from the appointed day i.e. 3.10.1975 and the jurisdiction of the Civil

Court was barred to look into this question or grant the relief of declaration in favour of the plaintiffs and as such, the findings by the learned trial Court cannot be said to be correct since Civil Court had no jurisdiction to look into this question of conferment of proprietary rights and the result of the decision was that the suit filed by the plaintiffs was liable to be dismissed which was not dismissed by the learned first appellate Court as per the decision of this Court. Therefore, the findings of the learned first appellate Court dismissing the appeal filed by appellant are liable to be set aside and the suit of the plaintiffs shall deemed to have been dismissed. The appeal filed by the appellant is allowed accordingly and the suit shall be deemed to have been dismissed. There is no order as to costs. Record be returned to the concerned Court(s).

Miscellaneous applications, if any, pending, stand disposed of.

(V.K. Ahuja),
Judge

November 2, 2007
(BSS)